

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Temporary Immediate
Suspension of the Family Child Care
License of Christine Nelson and Roger
John Wheat.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter was heard by Administrative Law Judge (ALJ) Richard C. Luis, on July 7, 2004 at the Pennington County Courthouse in Thief River Falls. Michael E. Burns, Assistant Attorney General, 900 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101 appeared on behalf of the Pennington County Department of Welfare and Human Services (Local Agency) and the Department of Human Services (Department). Licensee Christine Nelson, 231 Tindolph Avenue North, Thief River Falls, MN 56701 appeared on her own behalf, and on behalf of the licensed facility, without counsel. There was no appearance by or on behalf of Licensee Roger John Wheat. The hearing record closed on July 7, 2004.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

Whether the temporary immediate suspension of the Family Child Care License of Christine Nelson and Roger John Wheat should be affirmed because of an imminent risk of harm to the safety of children served by their program?

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Licensee Christine Nelson has had a Family Child Care License for the premises at 231 North Tindolph Avenue in Thief River Falls since July 2002. Some time in September 2003, the license for the premises at 231 North Tindolph was made joint, to accommodate the addition on the License of Roger John Wheat, who lived at the residence and provided child care services.

2. On or about June 3, 2004, Roger Wheat engaged in cunnilingus with two female children who were receiving child care services at the Licensees' home. He licked the vagina of each girl with his tongue in two separate incidents. The girls are 5 and 3.5 years old, respectively. Licensee Christine Nelson was not at the facility when the incidents occurred.

3. In separate interviews with Thief River Falls police during early June, 2004, Mr. Wheat admitted he had committed the acts described in the preceding Finding. Each of the girls had indicated to their parents what Mr. Wheat had done, and the parents took separate cases to the police.

4. On June 23, 2004, Mr. Wheat was charged with Criminal Sexual Conduct in the First Degree, under Minn. Stat. § 609.342, subd. 1a, which provides that sexual contact with persons under age 13 is a felony. He has been in the Pennington County Jail in Thief River Falls since June 4, 2003. His bail is set at \$100,000.

5. Upon recommendation of the Local Agency, the Department issued an Order of Temporary Immediate Suspension against the License of Christine Nelson and Roger Wheat, based on the incidents described in the above Findings. The Order, issued on June 4, 2004, noted that the "Pennington County law enforcement" were investigating the serious violations alleged and, during the interim, the Local Agency could not ensure the safety of those enrolled in the Licensees' program. Licensee Christine Nelson filed a timely appeal, and this hearing process followed.

6. Christine Nelson had no part in and had no knowledge of the incidents of which Roger Wheat stands accused. If Wheat makes bail or otherwise is released from custody, he will not be living at 231 North Tindolph. Rather, Mr. Wheat possibly will live with relatives approximately 30 miles from Thief River Falls. If Wheat is released, Ms. Nelson will forbid him from being near or having any contact with the day care children.

7. Mr. Wheat resides at the Pennington County Jail, but receives his mail for the purpose of this proceeding at 231 North Tindolph in Thief River Falls. The contents of mailings for him sent to that address have been transmitted to him by Ms. Nelson. Ms. Nelson informed him of the hearing conducted on July 7, but Mr. Wheat took no steps to seek a release from jail to attend the hearing.

Based on the above Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and Chapter 245A.07, subd. 3.

2. The service of notice in this matter was proper and the Department has complied with all relevant substantive and procedural requirements of law and rule.

3. Any of the above Findings more properly termed Conclusions are adopted as such.

4. The Department has established reasonable cause for the immediate suspension of the Joint License of Ms. Nelson and Mr. Wheat. The act of criminal sexual contact with day care children ages 5 and 3.5 establishes that person served by the Licensees' program are in imminent risk of harm to their safety.

5. The Licensees have not proven that imminent risk of harm to the safety of children served by their program does not exist.

6. It is appropriate to place the Joint License of Christine Nelson and Roger Wheat on temporary immediate suspension indefinitely, pending possible further disciplinary action.

Based on the above Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Temporary Immediate Suspension of the Family Child Care License of Christine Nelson and Roger John Wheat be AFFIRMED.

Dated this 16th day of July, 2004

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Reported: Taped

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Ms. Nelson argues that the license should not be affected so long as: (1) she has done nothing and knew of nothing illegal; and (2) Mr. Wheat, who now is in jail, will not be coming to the licensed premises upon his release, if such release ever occurs.

Nelson's arguments ignore the fact that the License is issued to Nelson and Wheat jointly, so the acts to which Mr. Wheat admitted affect the entire License. Ms. Nelson has no authority to operate family child care facilities on her License alone because she has no separate License. As noted in the testimony of Ms. Treitline-Sax (licensing official for the Local Agency) a joint license cannot simply be transferred to an individual – a separate application process must be undertaken.

The fact that Ms. Nelson will do all she can to keep Mr. Wheat away does not mean Wheat will have no contact with day care children, should operations continue. No restraining order exists to keep him away from the Tindolph Avenue residence, and Ms. Nelson's uncorroborated hearsay allegations to the effect that Mr. Wheat will likely be sheltered by relatives are too remote to prove he will never be at the licensed premises.

The fact that Mr. Wheat did not appear did not deprive the Licensees or the licensed premises of representation, because Ms. Nelson appeared, which appearance was, as a matter of law, on behalf of the Joint Licensees and their facility.^[1] For purposes of this proceeding, notice mailed to the facility at 231 North Tindolph, Thief River Falls, is legal service on both Licensees. Testimony established also that Ms. Nelson informs Mr. Wheat of all correspondence sent to 231 North Tindolph in connection with this matter.

R.C.L.

^[1] Ms. Nelson testified that if Mr. Wheat had appeared, he would testify that Ms. Nelson was not present when the sexual contact forming the subject matter of this case was committed. The ALJ notes that he believes Nelson's testimony to that effect, which evidence establishes independently the fact that she was not there. Wheat's testimony, if given, would therefore have been cumulative only, and was not essential to establishing the Licensees' case.